



BAIL SLIP

The Appellant / Accused No.1 namely 1)Mariano Anto Bruno, S/o.John Bricks Mascarenhas and 2) Alphonsal / Accused No.3, W/o.John Bricks Marcarenhas were directed to be released on bail in and by the order of this Court dt.09.04.2021 and made in Crl.M.P.No.4713 of 2021 in Crl.A.NO.166 of 2021 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.08.2021
DELIVERED ON : 31.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.166 OF 2021

1.Mariano Anto Bruno
S/o.John Bricks Mascarenhas

2.Alphonsal
W/o.John Bricks Marcarenhas ...Appellants / Accused 1 & 3

Vs

The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai-600 023. ...Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to set aside the order of conviction passed by the Sessions Judge, Mahila Court at Chennai in S.C.No.209 of 2016 dated 26.03.2021, under Section 498A of the Indian Penal Code for imprisonment for a period of 3 years with a fine of Rs.5,000/- each in default which sentence to undergo simple imprisonment for a period of one month and under Section 306 of the Indian Penal Code, for imprisonment for a period of 7 years with a fine of Rs.25,000/- each in default of which sentence to undergo simple imprisonment for a period of 3 months by allowing the present Criminal Appeal.

For Appellants : Mr.R.Singaravelan
Senior Counsel
for M/s.R.Jayaprakash



For Respondent : Mr.S.Sugendran
Government Advocate (Criminal Side)

For P.W.1 : Mr.V.Parthiban

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JUDGMENT

The Criminal Appeal is filed against the judgment passed by the Sessions Judge, Mahila Court at Chennai in S.C.No.209 of 2016 dated 26.03.2021.

2. The respondent police registered a case against the appellants and one other for the offences punishable under Sections 174 Cr.P.C and later, it was altered into Sections 498 (A) and 306 IPC in Crime No.1865 of 2014 and investigated the matter and laid the charge sheet before the learned Metropolitan Magistrate, Egmore, Chennai. The learned Metropolitan Magistrate has taken the charge sheet on file in P.R.C.No.68 of 2016. Since the offences are triable by the Court of Session, the case was committed to the learned Principal Sessions Judge, Chennai and the same was taken on file in S.C.No.209 of 2016. Since the offences are against the woman, the learned Principal Sessions Court made over the case to the Mahila Court, Chennai for disposal in accordance with law. The learned Special Judge after receiving the records and completing the formalities, framed the charges against the appellants for the offences under Sections 498(A) and 306 IPC.

3. After framing the charges, in order to prove the case of the prosecution, during the trial, on the side of prosecution, 15 witnessess were examined as P.W. 1 to P.W.15 and 12 documents were marked as Exs.P1 to P12 and 3 material objects were marked as M.O.1 to M.O.3.

4. After completing the examination of the prosecution witnesses, all the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellants by questioning under Section 313 Cr.P.C, but they denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was let in, however, 3 documents were marked as Exs.D1 to D3.

5. After completing the trial and hearing the arguments advanced on either side and considering the materials, the trial Court found the accused No.2, who is the father-in-law of the deceased, not guilty and acquitted him from the charges and found the appellants/first and third accused guilty for the offences under Sections 498(A) and 306 IPC and sentenced them to undergo three years simple imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) each, in default, to



undergo one month simple imprisonment for the offence under Section 498(A) IPC and further, they were convicted and sentenced to undergo seven years of rigorous imprisonment and to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards fine each, in default, to undergo three months simple imprisonment. Challenging the said judgement of conviction and sentence, the appellants/first accused and third accused have preferred the present appeal before this Court.

6. The case of the prosecution is that the marriage between the deceased and the 1st accused was solemnized in the year 2005. Since the deceased was not having child for 1 ½ years, the accused persons abused the defacto complainant in filthy language and also compelled her to participate in the Pooja and whenever the deceased refused for the same, they scolded her. Thereafter, in the year 2007, the deceased gave birth to a male child, by name, Rosando, by cesarean. After delivery, the deceased was living along with the accused persons and they were given continuous trouble to her and demanded more dowry and also harassed her for the same. When the same was questioned by the mother of the deceased, they insulted her also and thereby, caused mental agony to the deceased. Due to the continuous harassment of all the accused, the deceased was driven to commit suicide at about 05.00 p.m on 05.11.2014. Thereby, all the accused committed the offence of abetment to commit suicide. Hence, the complaint.

7. The learned Senior Counsel appearing for the appellants argued the case elaborately and filed a written submission wherein it is stated that at the first instance, no incriminating statement was made by P.W.1 and the last rites of the deceased took place at Thoothukudi at the house of the P.W.1 and the appellants had participated in the last rites of the deceased. He further submitted that the elder daughter of P.W.1, namely, Shanthini had asked for the custody of the first appellant's child and they refused for the same. P.W.9 is the Psychiatrist who had given treatment to the deceased on 04.11.2014. She had deposed that the deceased expressed her disinterest in duty, complained of lack of sleep, not feeling hungry and also had no interest over anything and also deposed that these were the symptoms of depression. P.W.9 had further deposed that the deceased had stated that already thrice she had the suicidal thoughts and attempted twice and the deceased had undergone treatment for the same. The report given by P.W.9 is marked as Ex.P1. Further, the evidence of P.W.9 is vital to the facts and circumstances of the case and the same was not considered by the Court below. None of the statements deposed by P.W.1 to P.W.3 would make out an offence either under Section 306 or under Section 498-A IPC. Moreover, there was no earlier complaints given by any of the family members of the deceased or



by the deceased pertaining to any sort of harassment or cruelty, etc., against the appellants herein. The victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society, to which, the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide and the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. But, in the facts and circumstances of the case, there is no material worthy credence to hold that the deceased Usha was hypersensitive and that for other reasons and not on account of cruelty, she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. He would further submit that within a few days after the marriage, when a newly married bride would reasonably expect love and affection from the in-laws, but, she was abused by the mother-in-law/third accused by saying that the deceased was a woman of evil luck and only because an elderly member in the family had died after her marriage. He also relied upon the reported judgments of the various High Courts, which are as follows:-

- (i) Gananath Pattnaik Vs. State of Orisa reported in (2002) 2 SCC 619;
- (ii) Sanju Alias Sanjay Singh Sengar Vs. State of M.P. Reported in (2002) 5 SCC 371;
- (iii) G.M.Ravi Alias G.Purushotham Vs.State of A.P reported in 2003 SCC Online AP 1258;
- (iv) Bhairon Singh Vs.State of Madhya Pradesh reported in (2009) 13 SCC 80;
- (v) Chitresh Kumar Chopra Vs. State reported in (2009) 16 SCC 60;
- (vi) Mangatram Vs.State of Haryana reported in (2014) 12 SCC 595;
- (vii) Gurucharan Singh Vs. State of Punjab reported in (2017) 1 SCC 433;
- (viii) Meena Vs. State reported in 2017 (3) MLJ (Cr1) 102;
- (ix) M.Arjuna Vs. State Rep. by its Inspector of Police reported in (2019) 3 SCC 315.
- (x) Gurujit Singh Vs. State of Punjab reported in (2020) 14 SCC 264; and
- (xi) Sangameshwaran Vs. State reported in 2021-2-L.W(Cr1.) 88.

8. He further submitted that the Supreme Court as well as this Court on various occasions had decided that cases, in which, the charges of Section 498(A) and 306 IPC involved, have to be decided according to the specific facts and circumstances involved in the particular case and there is no straight formula



available to prove those charges. The conviction of the appellants is against the well settled principles of law as the appellants have not committed any offence as alleged by the prosecution. Therefore, the judgement of the trial Court is liable to be set aside and the appeal is to be allowed.

9. The learned counsel for the defacto complainant assisted the learned Government Advocate (Criminal Side). The learned Government Advocate (Criminal Side) vehemently argued the case and also filed a written submission before this Court, wherein it is stated that the evidence of P.W.1 to P.W.3 has clearly established that at the time of marriage, all the accused persons have demanded more dowry and also stated as to how the victim was abused and humiliated for not conceiving and in the guise of performing poojas, the accused persons even went to the extent of forcing the victim to consume "Komiya/Cow Urine". The three witnesses who are all family members have cogently and consistently stated about the nature of harassment and incident which instigated the victim to commit suicide leaving her sole child. The evidence of the hostile witnesses, namely, P.W.4 to P.W.7 have not shaken the foundation of the prosecution and especially, the evidence of P.W.7 was tendered only with a view to safeguard A-1, who is also a Doctor by profession. He would further submit that P.W.2 has very clearly given explanations for the initial delay for lodging complaint and why she has not levelled any allegation against the accused persons in the statement, dated 10.11.2017. There is a clear evidence to show that only after the abortion of child in 2014, the abusive and harassment and instigation by the accused persons have increased in many folds. Hence, he vehemently opposed to allow this appeal.

10. Since this Court as appellate Court is the final Court of fact finding, it has to necessarily reappraise the entire evidence and give an independent finding. This Court has carefully gone through the entire records and the material evidence. The respondent police registered the case against the appellants and one another for the offences punishable under Sections 174 Cr.P.C and later, it was altered into Sections 498 (A) and 306 IPC in Crime No.1865 of 2014 and investigated the matter and laid the charge sheet before the learned Metropolitan Magistrate, Egmore, Chennai, the learned Metropolitan Magistrate has taken the charge sheet on file in P.R.C.No.68 of 2016. Since the offences are exclusively triable by the Court of Session, the case was committed to the learned Principal Sessions Judge, Chennai and the same was taken on file in S.C.No.209 of 2016. Since the offences are against the woman, the learned Principal Sessions Court made over the case to the Mahila Court, Chennai for disposal in accordance with law. After completing the trial and hearing the arguments advanced on either side and considering the materials, the trial Court found the accused



No.2/the father-in-law of the deceased not guilty and acquitted him from the charges and found the appellants/first and third accused guilty for the offences under Sections 498(A) and 306 IPC.

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11. The first appellant/A1 is the husband of the deceased, second appellant/A3 is the mother in law of the deceased and A2 is the father in law of the deceased who is not a party in this appeal and the trial Court acquitted him from both the charges.

12. Out of 15 witnesses examined on the side of prosecution, P.W.1 is the mother of the deceased. P.W.2 is the elder Sister of the deceased. P.W.3 is brother of the deceased. P.W.4 is the Carpenter who broke open the bathroom door, in which, the deceased found died. P.W.5 is the servant maid working in the house of the accused. P.W.6 is the AC Mechanic. P.W.7 is the Colleague of deceased, namely, Dr.Kavitha working as an Assistant Professor. P.W.8 is also the Colleague of deceased, namely, Dr.Mankayarkarasi and she was working as an Assistant Professor. P.W.9 is the Doctor, namely, Shaline, who gave treatment to the deceased on 04.11.2014. P.W.10 is the Doctor, who conducted autopsy on the dead body of the deceased. P.W.11-Dr.Rajesh declared the deceased as brought dead when she was brought to the Rajiv Gandhi Government Hospital for treatment. P.W.12 - Dr.Gladis, was working in private hospital who treated the deceased on her abortion of the second child on 31.03.2014. P.W.13-Venkatesh is the auto driver and he deposed about Observation Mahazar. P.W.14-Thandavamoorthy is the Sub-Inspector of Police and he received the complaint. P.W.15-T.R.Yuvaraj is the Inspector of Police who investigated the case and altered the case from Section 174 Cr.P.C to for the offence under Section 306 IPC.

13. Out of 12 exhibits, Ex.P.1 is the Psychiatrist Report. Ex.P2 is the Postmortem Certificate. Ex.P3 is the Forensic Report. Ex.P4 is the Accident Register. Ex.P5 is the Medical Report. Ex.P6 is the Signature of P.W.13 in observation Mahazar. Ex.P7 is the Complaint. Ex.P8 is the First Information Report. Ex.P9 is the Observation Mahazar. Ex.P10 is the Rough Sketch. Ex.P11 is the Inquest Report. Ex.P12 is the Section Alteration report. On the side of the defence, three Exhibits were marked. Ex.D1 is the E-mail dated 20.05.2013. Ex.D2 is the E-Mail dated 21.12.2005 and Ex.D3 is the 10th Day Obituary Card. As already stated, the first appellant who is the husband of the deceased made a complaint before the P.W.14/Sub Inspector of Police and registered the case in Crime No.1865 of 2014 and P.W.15 took up the investigation and during the course of investigation, he altered the Sections for the offences under Sections 498(A) and 306 IPC. The evidence of P.W.10/Dr.Ramalingam who conducted the autopsy on the dead body of the deceased and Postmortem



Report/Ex.P2, would clearly show that the death of the deceased is unnatural.

14. The fact remains that the death of the deceased is unnatural one, which is not disputed by the appellants. The deceased got the post graduation in Psychiatrist and she worked as a Psychiatrist in the Kilpauk Government Institute of Mental Health. At the relevant point of time, the marriage between the deceased and the first accused was solemnized in the year 2005 and the accused persons demanded more dowry from the deceased family and the same was accepted by the deceased family members. After their marriage, the accused persons gave continuous trouble and abused the deceased in filthy language for not conceiving and compelled her to participate the Pooja and harassed her to drink cow urine. In the year 2007, the deceased gave birth to a male child, by name, Rosando. After delivery, the deceased went to matrimonial home along with her mother. At that time also, the accused persons insulted the deceased mother and also harassed the deceased to do all the domestic works by stating that even if she is a Doctor, she is their daughter-in-law only and also compelled her to resign her job. Due to harassment of the accused, there was an abortion to her and the Doctors advised her to take bed rest for three weeks. Even though the third accused is old age lady, she harassed the deceased to do the domestic work by pulling her hair, for which, the victim had taken extreme steps to end her life. Thereby, the accused persons committed the offences under Sections 498(A) and 306 IPC.

15. The deceased conveyed all the harassment that had been caused by the accused persons to her sister/P.W.2. At the time of trial, P.W.2, who is the sister of the deceased, has deposed all the harassment that has been made against the deceased by the accused persons. P.W.2/sister of the deceased noticed some injuries on the face of the deceased and she enquired about the injuries to her and the deceased says that all the injuries were caused by the first appellant who is none other than the husband of the deceased.

16. Two things have to be proved by the prosecution in order to sustain the appellants' conviction for the offences under Section 498(A) and 306 IPC, as to whether, the death of the deceased is unnatural and as to whether the deceased committed suicide due to harassment, inducement and abetment of the appellants. In this case, as already stated, as per the Medical evidence, it is clear that the victim died unnaturally and the evidence of P.W.1 to P.W.3 proved that the appellants made harassment on the victim and caused mental and physical cruelty. Due to cruelty, the deceased has taken the extreme step to end her life.



17. The Doctor who conducted autopsy found the following injuries on the body of the deceased:

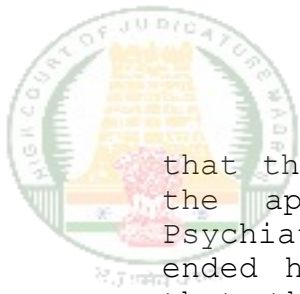
"An oblique incomplete of ligature mark on the front and sides of neck with dark red abrasions. Dark red contusion in the centre of lower lip and upper lip. Dark red contusion in front of her left elbow and on reflection of scalp, the doctor found dark red contusion on the right temporal region of scalp and also found a vertically oblique dark red abrasion on the front of middle third of left leg."

The above injuries are corroborated with the evidence of P.W.2. Even prior to the occurrence, the deceased met P.W.2 and at that time, P.W.2 enquired about the injuries and the deceased directly told about the injuries and harassment that were caused by the appellants.

18. In cases of this nature, no independent witness can be expected, because in India, the woman are even well qualified persons, considering their family reputation, they may not express certain things to any third person or stranger and they can only say either to their mother or sister or very close friend or well wishers. In this case, P.W.1 is the mother of the deceased and P.W.2 is the elder sister of the deceased. There are no medical records produced on the side of the appellants to show that the deceased was a mentally disordered person or she is having tendency of committing suicide. However, the evidence of P.W.1 to P.W.3 and P.W.10, would clearly show that the deceased committed suicide due to the continuous harassment and the mental cruelty made by the appellants. Hence, the evidence of P.W.1 to P.W.3 are reliable and trustworthy, which inspires the confidence of this Court to convict the appellants. Testimony of interested witness cannot be per se discarded and the Court has to adopt careful approach and analyse evidence to find out the cogency and credibility. This Court does not find out any reason to disbelieve the evidence of P.W.1 to P.W.3 and evidence of P.W.2 was corroborated by the evidence of P.W.10.

19. A careful reading of the entire judgments relied upon by the learned Senior Counsel for the appellants, there is no quarrel with the well settled proposition of law laid down by the Apex Court and also proposition made by the various high Courts. But, however these judgements are not applicable to the case on hand. The evidence of P.W.1 to P.W.3 are very clear and there is no contra evidence to disprove the case of the prosecution. It is settled proposition that every criminal case has to be decided on the basis of facts and evidence available and not on precedence.

20. A careful reading of the evidence of P.W.1 to P.W.3 and also the evidence of the Doctor who conducted postmortem proved



that the victim was subjected to harassment and cruelty made by the appellants. She is well educated and working as a Psychiatrist in the Government Mental Hospital, Kilpauk, she ended her life by way of hanging. Therefore, this Court finds that the appellants have committed the offence under Sections 498(A) and 306 IPC and the learned trial Judge rightly appreciated the evidence and convicted the appellants and therefore, there is no merit in this case and the appeal is liable to be dismissed.

Accordingly, this Criminal Appeal is dismissed. The suspension of sentence already granted by this Court in CrI.M.P.No.4713 of 2021 stands cancelled. The respondent police is directed to send the appellants to undergo remaining period of sentence.

Sd/-
Assistant Registrar(CS-IX)

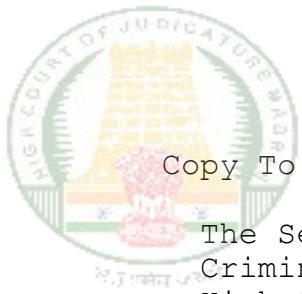
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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Mahila Court at Chennai.
- 2.The Vth Metropolitan Magistrate,
Egmore, Allikulam,
Chennai - 8
- 3.(do through) The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
- 4.The Inspector of Police,
K-2, Ayanavaram Police Station,
Chennai-600 023.
- 5.The Superintendent,
Central Prison,
Puzhal,
Chennai.
- 6.The Public Prosecutor,
High Court,
Madras.



Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

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+1cc to M/s.R.Jayaprakash, Advocate Sr.No.5768

+1cc to M/s.V.Parthiban, Advocate Sr.No.6611

Crl.A.No.166 of 2021

KSM(CO)

RVM(11/02/2022)